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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,929	06/26/2001	Andreas Herpens	Beiersdorf 722-KGB	3738

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EXAMINER

LAMM, MARINA

ART UNIT PAPER NUMBER

1616

DATE MAILED: 09/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/891,929

Applicant(s)

HERPENS ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

Claims 8-17 are pending in this application filed 6/26/01.

#### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 9 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Sellers, Jr. (US 5,667,790).

Sellers, Jr. teaches a method for treating skin affected by acne by applying to the affected skin a composition containing 1-50% of aluminum halide salt such as aluminum chlorhydrate, which is a well-known antiperspirant compound. See Abstract; col. 2, lines 37-45, 61-63. The composition of Sellers, Jr. “can reach the sebaceous glands to decrease the activity of oil production therefrom.” See col. 1, lines 15-18; col. 4, lines 37-41.

Thus, Sellers, Jr. teaches each and every limitation of Claims 8, 9 and 12-17.

3. Claims 1-10 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hewitt et al. (US 3,842,847).

Hewitt et al. teach compositions for the treatment of hair and scalp, said compositions containing 0.5-8% of an astringent metal salt (e.g. aluminum chlorohydrate) that causes a reduction in the activity of the sweat glands of the scalp. See Abstract; col. 2, lines 4-32; col. 6, lines 47-63. The compositions of Hewitt et al. diminish secretions of perspiration and

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sebum, keep hair and scalp clean for a longer period of time and prevent acne. See col. 6, lines 47-68; col. 7, lines 1-5.

Thus, Hewitt et al. teach each and every limitation of Claims 1-10 and 12-17.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hewitt et al. in view of Jaeger et al. (DE 3015868, Abstract).

Hewitt et al. applied as above.

Hewitt et al. do not explicitly teach preventing or removing dandruff as claimed in the instant claim. However, Jaeger et al. teach using antiperspirant aluminum salts as dermatological agent against flaking of skin and scalp. See Abstract.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use compositions and method of Hewitt et al. for treating dandruff as suggested by Jaeger et al.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,908,355; US 6,251,412; WO 00/56277 A1; JP408291415A, Abstract.
7. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml  
8/30/02

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER

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